

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

GARY WALLACE v. KEVIN MYERS, WARDEN

**Appeal from the Circuit Court for Wayne County
No. 13152 Robert Holloway, Judge**

No. M2003-02758-CCA-R3-HC - Filed October 19, 2004

The Defendant, Gary Wallace, appeals from the trial court's dismissal of his petition for habeas corpus relief. The State has filed a motion requesting that this Court affirm the trial court's denial of relief pursuant to Rule 20, Rules of the Court of Criminal Appeals. The petition fails to establish a cognizable claim for habeas corpus relief. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed..

Tenn. R. App. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Gary Wallace, Clifton, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Michael Markham, Assistant Attorney General; Mike Bottoms, District Attorney General; and P. Robin Dixon, Assistant District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On April 29, 1985, the Defendant was convicted upon a jury verdict of one count of armed robbery. He was sentenced to life imprisonment. On August 1, 2003, the Defendant filed a petition seeking habeas corpus relief. The petition alleged generally that the trial court lacked jurisdiction because the indictment was defective because it alleged that two separate offenses were committed, rather than one, and it alleged that multiple weapons were used. The petition also alleged that the trial court was without jurisdiction to enter a judgment of conviction against him because the court failed to sign the minutes of the court. The State of Tennessee moved to dismiss the petition, alleging that it failed to state a valid claim for habeas corpus relief. The trial court granted the motion, and entered an order dismissing the petition. It is from this order that the Defendant appeals.

The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. Archer v. State, 851 S.W.2d 157, 163 (Tenn. 1993). Habeas Corpus relief is available only when it appears on the face of the judgement or the record that the trial court was without jurisdiction to convict or sentence the Defendant or that the sentence has expired. Id. at 164. If the court rendering a judgment has jurisdiction of the person, the subject matter, and has the authority to make the challenged judgment, the judgment is voidable, not void; and the judgment may not be collaterally attacked in a suit for habeas corpus relief. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). The Defendant has attached a copy of what he asserts to be the indictment which charged him in this case. This indictment shows that the petitioner was charged only with the offense of armed robbery. The attachments to the petition show that the Defendant was indicted on one count of armed robbery and was convicted of one count of armed robbery.

Because the petition, along with the attachments, failed to state a cognizable claim for habeas corpus relief, we conclude that the trial court properly dismissed the petition without a hearing and without appointing counsel. The Defendant failed to allege facts which would entitle him to habeas corpus relief.

Accordingly, the State's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20 of the Rules of the Tennessee Court of Criminal Appeals.

DAVID H. WELLES, JUDGE